IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.8442 OF 2004

Indrakant Kishordas Shah,
Age: 66 years, residing at
Block No.3, Mangesh Sadan,
1st Carter Road,
Borivali (East),
Mumbai-400 066. .... Petitioner

- Versus -

Keshrinath D. Mhatre,
Age 85 years,
residing at Mangesh Sadan,
1st Carter Road,
Borivali (East),
Mumbai-400 066. .... Respondent

Shri J.J. Thakkar for the Petitioner.

Shri P.N. Shah for the Respondent.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: OCTOBER 27, 2004

ORAL JUDGMENT:

1. Heard the learned Advocates for the parties. Perused the records. Rule. By consent, the rule is made returnable forthwith.

2. The petitioner challenges the order dated 9-3-2004 passed by the trial Court as well as the order dated 1-7-2004 passed by the revisional Court in relation to the objection which was sought to be raised by the petitioner to the admissibility of the documents in the

evidence which were sought to be produced by the respondent/plaintiff.

3. The facts relevant for the decision are that the respondent has filed the eviction suit against the petitioner on the ground of reasonable and bona fide need of the suit premises to the respondent. After completion of the pleadings in the suit, the respondent placed on record the evidence in the form of affidavit in accordance with the provisions of law and the arguments were heard on the point of admissibility of the documents consequent to the objection raised by the petitioner in that regard. Pursuant thereto, the trial Court passed the following order:-

> "Heard both the Advocates. In view of observation of Hon'ble SC reported in AIR 2001 SC 1158, the documents are exhibited tentatively and objections will be taken into consideration at stage of final hearing. The documents to be exhibited serially."

It appears that consequent to the said order, the documents were exhibited and the matter was adjourned for the purpose of cross-examination of the respondent/plaintiff by the petitioner/defendant. The

matter was carried in revision application by the petitioner and the revisional authority dismissed the same by the impugned order on the assumption that exhibiting the documents in evidence is an administrative act and does not amount to deciding any right of the party, and further that the Apex Court in the matter of **Bipin Shantilal Panchal v. State of Gujarat and another** {AIR 2001 SC 1158} has permitted the practice of exhibiting documents in the course of evidence and postponing the decision about the admissibility of such documents in evidence at the time of final disposal of the suit.

4. The learned Advocate for the petitioner, placing reliance in the decision in the matter of **R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple and another,** reported in (2003) 8 SCC 752 as well as **Ram Rattan (dead) by legal representatives v. Bajrang Lal and others,** reported in AIR 1978 SC 1393, **Javer Chand and others v. Pukhraj Surana,** reported in 1961 SC 1655 as well as the judgments of this Court in the matters of **Shri Saifuddin Saheblal Vazir v. Smt. Habjabai Mishra Patel & Anr.,** reported in 2003 (1) All M.R. 131, **Shri Durgashankar S. Trivedi & Ors. v. Shri Babubhai Bhulabhai Parekh,** reported in 2003 (2) ALL M.R. 565 and **Bharat R. Desai & Anr. v. Naina Mohanlal Bhal,** reported in 2004 (2) All M.R. 291,

submitted that the impugned orders are contrary to the settled law on the point of obligation of the Court to decide the objection relating to the admissibility of the document at the time when it is raised in the course of recording of evidence and not to postpone such decision till the final disposal of the suit. He further submitted that the decision of the Apex Court in **Bipin Shantilal Panchal's** case (supra) has no application to the matter to which the Code of Civil Procedure applies and the observations therein are in relation to the criminal cases, and this is further clear from the decision of the Apex Court in **R.V.E. Venkatachala Gounder's** case (supra).

5. The learned Advocate for the respondent, on the other hand, drawing attention to the decision of the learned single Judge of this Court in the matter of **Bama Kathari Patil v. Rohidas Arjun Madhavi & Anr.,** reported in 2004 (2) All M.R. 290, submitted that the act of exhibiting a document is an administrative act and it does not deal with the rights of the parties and, therefore, no fault can be found with the order passed by the revisional Court. At the same time, he fairly submitted that since the petitioner had raised the objection to only five documents, namely, the power of attorney, the documents relating to the medical treatment to the respondent's wife and issued by the

doctor and the hospital, the pass book issued by the State Bank of India and the pass book issued by the post office and lastly the postal envelopes, the respondent has no objection for remand of the matter directing the trial Court to decide the objection raised by the petitioner for the admissibility of those documents.

6. It is not in dispute that the objection which has been raised by the petitioner relates to only the above described five documents, as narrated by the learned Advocate for the respondent. Considering the statement made by the learned Advocate for the respondent that the respondent has no objection for direction to the trial Court to decide the objection raised by the petitioner for the admissibility of the said documents, the petition can be disposed of with the said direction. However, I find it necessary to deal with very important issues sought to be raised by the petitioner in this petition as there appears to be some misunderstanding on the part of the Court regarding its obligation to dispose of the objection raised by a party to the suit regarding the admissibility of the document/s immediately on such objection being raised in the course of recording of the evidence and not to postpone the decision in that regard till the final disposal of the suit.

7. Undoubtedly, the learned single Judge of this Court in **Bama Kathari Patil's** case (supra) has observed that:-

> "Exhibiting of a document is an administrative act. It is true that a document which is produced in court is ordinarily exhibited only after its proof. But, exhibiting a document does not mean that the document is proved and non-exhibiting a document does not mean that the document is not proved. A document is required to be proved in accordance with the provisions of the Evidence Act. Merely for administrative convenience of locating or identifying a document, it is given an Exhibit number in courts."

There can hardly be any dispute on the proposition that the act of marking exhibit numbers on the documents is a ministerial act. However, the issue relating to the admissibility of the document warrants adjudication thereof which has to culminate into a decision on the point of the admissibility of the document objected to and that is the mandate of Order 18, Rule 4 of the C.P.C. Certainly any such decision would involve the application of mind by the Court before recording or

endorsing the exhibit number on the document in accordance with the provisions of law comprised under Order 13, Rules 4 and 6 of the C.P.C. Merely because a document is placed on the file or in the records of the Court pertaining to a particular suit, that by itself does not result in such document forming part of the evidence in the suit. In order that a document should form part of the evidence, it is necessary for the Court to decide the issue pertaining to the admissibility of such a document in the evidence and on such decision, if the Court arrives at the conclusion that the document is admissible in evidence, then the question of writing the exhibit number thereon could arise. Of course, if the document is held to be inadmissible in evidence, endorsement in terms of Order 13, Rule 6 will have to be made on such document. The statement that the exhibition of a document in evidence is a ministerial (or an administrative act, as sought to be argued) act does not amount to complete pronouncement of law in relation to the issue pertaining to the admissibility of the document in evidence. Being so, by merely relying upon the decision in Bama Kathari Patil's case, the Court cannot postpone the decision on the point of admissibility of the document once an objection in that regard is raised by the opposite party in the course of recording of the evidence. It is the obligation of the Court to decide such objection by an order and thereupon

to proceed to record the exhibit number on such a document in terms of the provisions comprised under Order 13, Rule 4 of the C.P.C. in case the document is held admissible. Undoubtedly, in case of refusal to admit such a document, the same will have to be dealt with in accordance with the provisions of law comprised under Rule 6 thereof.

8. The point relating to the obligation of the trial Court to deal with and decide the objection, if any, raised to the admissibility of the document was extensively dealt with by this Court in the matters of **Shri Durgashankar Trivedi** (supra) and **Bharat Desai** (supra). The law in that regard has been clarified after taking into consideration the relevant decisions of the Apex Court as well as of this Court on the point in issue. It was held in Durgashankar Trivedi's case that:-

> "While allowing the parties to lead evidence in the form of affidavits, the courts therefore, have to bear in mind that though the parties are entitled to produce documents along with affidavit, the admissibility of such document is to be decided by the court before documents are being exhibited in evidence and the

> decision cannot be postponed till the final disposal of the case or any time after the documents are exhibited in accordance with Order XIII Rule 4 of CPC. The objection to the admissibility of the document should be dealt with and decided at the time the affidavit with documents is produced and being taken on record."

Similarly, it was held in Bharat Desai’s case that:-

> "The court must proceed to resolve immediately thereupon questions as regards the proof and admissibility of documents. The question of proof and admissibility must be resolved by the Court in order to ensure that the cross examination and re-examination, if any, then proceeds to take place on the basis of documents which have been held to be proved and which have been admitted in evidence. Deferring the question of proof and admissibility of documents to an uncertain date in the future is neither in the interest of justice nor does it subserve the object of

> expedition. The Court must therefore at the outset determine the question of proof and admissibility of documents."

9. It is also to be noted that as long back as in 1973 and even prior to the amendment to the C.P.C. in 1976, the Apex Court in **Ram Rattan's** case (supra) had ruled that:-

> "When the document was tendered in evidence by the plaintiff while in witness box, objection having been raised by the defendants that the document was inadmissible in evidence as it was not duly stamped and for want of registration, it was obligatory upon the learned trial Judge to apply his mind to the objection raised and to decide the objection in accordance with law. Tendency sometimes is to postpone the decision to avoid interruption in the process of recording of evidence and, therefore, a very convenient device is resorted to, of marking the document in evidence subject to objection. This, however, would not mean that the objection as to admissibility on the

> ground that the instrument is not duly stamped is judicially decided; it is merely postponed."

This decision read with the decision of the Apex Court in **Javer Chand's** case (supra) would reveal that the Apex Court in clear terms has held that where the question as to admissibility of document is raised, the party challenging the admissibility of the document has to be alert to ensure that the document is not admitted in evidence contrary to the provisions of law and the objection in that regard has to be judicially determined by the Court before proceeding with the matter. This decision has been reiterated by the Apex Court in **R.V.E. Venkatachala Gounder's** case (supra) wherein the Apex Court has further clarified that:-

> "The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient.

> In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit."

It was further ruled that:-

> "The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object

> allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof."

10. The rulings of the Apex Court therefore obviously reveal that in cases where the dispute relates to the admissibility of the document on the ground that the document itself is not admissible in evidence, such an objection can be pursued even after the document is admitted in evidence and can be a ground for challenge of the finding of the lower Court based on such document whereas in cases where the admissibility can be objected to on the ground of mode of proof of the document, such an objection has to be taken at the appropriate stage and is required to be dealt with and to be decided by the Court before admitting and exhibiting the document in the evidence.

11. Undoubtedly, the Apex Court in Bipin Shantilal Panchal’s case has observed thus:-

> "When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of

> oral evidence the Trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the Court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document then Court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed."

12. It is well-settled that a ratio of a decision is to be understood after taking into consideration the facts of the case, the issue involved for consideration and the findings arrived at by the Court on such issue **{vide: Union of India v. Dhanwantidevi, 1996 (6) SCC 44}.** Bearing in mind the said law laid down in relation

to the understanding of the ratio of a decision, it is to be noted that the Apex Court in Bipin Shantilal Panchal's case was dealing with a case arising under the N.D.P.S. Act and the procedure to be followed by the trial Courts in the matter of recording of materials which are produced in the course of such trial. Therein the defence counsel had questioned the admissibility of certain documents and had raised objection in that regard. The trial Court had disallowed those objections and in order to enable the defence to take up the matter before the High Court had adjourned the proceedings before the trial Court to indefinite period. In fact the observation of the Apex Court in the very decision in that regard is that:-

> "Though the Trial Court disallowed the objections as per an order passed on 24.7.2000 (presumably after hearing both sides at length) the trial Judge adopted a very unwholesome procedure by stopping the trial for a lengthy period, just to enable the defence to take up that order before the High Court. Even though the prosecution brought witnesses to be examined on 8-8-2000 the trial Judge hesitated to examine them, and extended the stay granted by himself and did not

> choose to take the evidence of those witnesses on the said date. However, the defence failed to challenge the said order and hence the trial proceedings were resuscitated on 16-8-2000."

In the background of those facts, when the matter had come before the Apex Court, taking note of the peculiar practice followed by the Court below, it has been held that:-

> "on different occasions the trial Judge has chosen to decide questions of admissibility of documents for other items of evidence, as and when objections thereto were raised and then detailed orders were passed either upholding or overruling such objections. The worse part is that after passing the orders the Trial Court waited for days and weeks for the concerned parties to go before the Higher Courts for the purpose of challenging such interlocutory orders."

Taking into consideration this factual aspect of the matter and observing that "It is an archaic practice

that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the Court does not proceed further without passing order on such objection." the above quoted ruling was given. Apparently, the Apex Court ruling is primarily to discourage the Courts below to adopt the procedure of delaying the disposal of the proceedings by passing lengthy orders in relation to the dispute pertaining to the admissibility of documents and thereafter postponing the matter indefinitely merely to enable the parties to approach the higher Court on such issue and thereby resulting in delay in disposal of the proceedings. It is also to be noted that the ruling has nowhere referred to the procedure to be followed by the Courts in civil matters but the decision is essentially in relation to the proceedings before the criminal Courts. Besides, considering the provisions of the C.P.C., and bearing in mind the object behind Order 18, Rule 4 of the C.P.C., as amended by the amendment in the year 1999-2000, it is necessary for the Courts below to deal with such objections to the admissibility of the documents as expeditiously as possible and at the stage when the same are raised with reasoned but not lengthy order and not to postpone the proceedings on that count nor to interrupt the recording of evidence on that count. That is the mandate of the proviso to Rule 4(1) of Order 18 of the C.P.C.

13. For the reasons stated above, therefore, the Court below is not justified in refusing to deal with the objection raised to the admissibility of the documents at the time the same was raised and to postpone the decision till the final disposal of the suit. The ruling in Bama Kathari Patil's case has to be understood bearing in mind that it relates to the proof of the contents of the document exhibited and not in relation to the admissibility of the document in evidence.

14. In the result, therefore, the petition succeeds to the extent the same relates to the admissibility of the documents which was objected to and undisputedly the objection was in relation to the five documents described to above. The impugned orders, therefore, are hereby quashed and set aside to the extent they relate to the documents which are ordered to be exhibited, ignoring the objection raised by the petitioner. The trial Court to hear the parties on the point of objection to the admissibility of the said documents and to pass appropriate order as expeditiously as possible and in any case, within a period of two months from the date of receipt of the writ of this Court. The rule is made absolute in above terms with no order as to costs.